

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

F&C BERKLEY PARK KC, LLC,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:19-cv-00787-GAF
)	
MW BUILDERS, INC.,)	
)	
Defendant/Third-Party Plaintiff,)	
)	
v.)	
)	
KIMBEL MECHANICAL SYSTEMS, INC.))	
WOLF CONSTRUCTION SERVICES,)	
INC., and INNOVATIVE)	
CONSTRUCTION SERVICES, LLC.)	
)	
Third-Party Defendants.)	

**UNOPPOSED MOTION FOR LEAVE TO FILE
SECOND AMENDED ANSWER TO PLAINTIFF’S COMPLAINT**

Defendant and Third-Party Plaintiff MW Builders, Inc., by and through its undersigned counsel, and pursuant to Rules 14 and 15 of the Federal Rules of Civil Procedure, moves for leave to file its proposed Second Amended Answer to Plaintiff’s Complaint attached hereto as Exhibit A. In support hereof, MW Builders states as follows:

As more fully addressed in the Suggestions in Support of this Motion, MW Builders is seeking leave to add affirmative defenses for: (1) federal preemption; (2) Election of remedies; (3) lack of duty; and (4) nondelegable duty. MW Builders also made minor edits to two preexisting affirmative defenses including an affirmative defense that Plaintiff breached its warranties by providing defective plans and regarding the negligence of Plaintiff or its design team in defectively approving or inspecting construction. This amendment is sought based on MW Builders’ continued investigation, review of project materials, as well the allegations alleged in the Answers

for the recently joined Third Party Defendants. Additionally, other provisions within the applicable building code or state law appear to apply to the same issues raised in Plaintiff's Complaint beyond the cited sections.

WHEREFORE, Defendant MW Builders, Inc. respectfully requests the Court grant its Motion for Leave to file its Second Amended Answer and for such further relief as this Court deems just.

Respectfully submitted,

McDOWELL, RICE, SMITH & BUCHANAN, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2020, a true and correct copy of the foregoing was filed using the Missouri CM/ECF System, which will send notice of such filing to all counsel of record.

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